



## **JURISDICTION AND VENUE**

1. Paragraph 1 contains legal conclusions to which no answer is required.
2. Paragraph 2 contains legal conclusions to which no answer is required.

## **PARTIES**

3. Defendant admits the allegations in this paragraph.
4. Defendant admits the allegations in this paragraph.
5. Defendant denies that Dr. Kyle L. Janek is the duly appointed Executive Commissioner of HHSC. Defendant denies that Dr. Janek is the Texas state official ultimately charged with supervision and control of public assistance programs and services, including the Medicaid program. Defendant denies that Dr. Janek is sued in his official capacity.

## **LEGAL FRAMEWORK** **Health Centers**

6. Defendant admits the allegations in this paragraph.
7. Defendant admits the allegations in this paragraph.

## **The Medicaid Program**

8. Defendant admits the allegations in this paragraph.
9. Defendant admits the allegations in this paragraph.
10. Defendant admits the allegations in this paragraph.

## **Medicaid Managed Care**

11. Defendant admits the allegations in this paragraph.
12. Defendant admits the allegations in this paragraph.
13. Defendant admits the allegations in this paragraph.

## **FACTUAL BACKGROUND**

14. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.

15. Defendant admits the allegations in this paragraph.
16. Defendant admits the allegation in the first sentence of this paragraph. Defendant denies the balance of the allegations in this paragraph to the extent that the requirements have been superseded by the waiver approved by the Center for Medicaid and Medicare Services.

#### **Changes to Texas's FQHC Payment System and TCHP's Response**

17. Defendant admits the allegations in this paragraph.
18. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.
19. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.
20. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.

#### **TCHP's November 2014 Termination of Legacy's Provider Agreement**

21. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.
22. Defendant admits the allegations in this paragraph.
23. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.
24. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.
25. Defendant admits the allegations in this paragraph.
26. HHSC lacks sufficient information or knowledge to admit or deny the allegations in the first sentence of this paragraph; and therefore, denies the same. HHSC admits that

it sent January 8, 2015, an email stating, “TCHP states they understand that for certain members, especially our pregnant members, they will have to provide them with an out of network authorization to continue care past February 1st. This is a routine operation for the Health Plan and they will work to ensure all members have continuity of care.”

27. Defendant admits the allegations contained in this paragraph.

### **HARM TO PLAINTIFF**

28. As to the first sentence of this paragraph, HHSC admits that TCHP terminated Legacy’s provider agreement, but denies the balance of the contention contained in the first sentence. HHSC denies the allegations contained in sentences two and three of this paragraph.
29. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.
30. HHSC lacks sufficient information or knowledge to admit or deny the allegations in this paragraph; and therefore, denies the same.
31. HHSC denies the allegations contained in paragraph 31.

### **CAUSES OF ACTION COUNT I 42 U.S.C. § 1983**

#### **HHSC’S Violation of the FQHC Payment Provisions in 42 U.S.C. § 1396a(bb)**

32. Paragraph 32 does not require a response.
33. Paragraph 33 contains legal conclusions to which no response is required.
34. Paragraph 34 contains legal conclusions to which no response is required.
35. Paragraph 35 contains legal conclusions to which no response is required.

## **PRAYER FOR RELIEF**

Paragraphs 1-5 of Plaintiff's Prayer for Relief contain legal conclusions and argument to which no response is required.

## **II. AFFIRMATIVE DEFENSES**

Pleading further, Defendant hereby asserts the following affirmative defenses to which it may be entitled:

1. Sovereign immunity bars any and all of Plaintiff's claims to which that defense may apply.
2. The Eleventh Amendment bars any and all of Plaintiff's claims to which that defense may apply.
3. To the extent that Plaintiff's claims or filings occurred outside the applicable statutory periods or were not thoroughly exhausted through any required administrative process, its claims are barred;
4. Defendant reserves the right to raise additional affirmative defenses as they become apparent during the development of the case.

## **III. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court enter judgment for him, and against Plaintiff, holding that Plaintiff take nothing by this action and award Defendant such further relief to which he is entitled, including costs and attorney's fees.

July 23, 2015

Respectfully submitted,

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*Counsel for Dr. Kyle Janek, In His Official Capacity as  
Executive Commissioner of the Texas Health and Human  
Services Commission*

CERTIFICATE OF SERVICE

I certify that on July 23, 2015, a copy of this response was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorneys in charge for plaintiff:

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